

1 UNITED STATES DISTRICT COURT.

2 EASTERN DISTRICT OF NEW YORK

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4 UNITED STATES OF AMERICA, :

10-CR-687

5

-against-

United States Courthouse

6

:

Brooklyn, New York

7

MARK THOMPSON,

8

Defendant.

9

:

January 13, 2011  
10:30 o'clock a.m.

10 - - - - - X

11 TRANSCRIPT OF SENTENCING  
12 BEFORE THE HONORABLE NICHOLAS G. GARAUFIS  
13 UNITED STATES DISTRICT JUDGE

13 ATTORNEYS FOR GOVERNMENT:  
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19

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23 Proceedings recorded by mechanical stenography,  
24 transcript produced by CAT.

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1 THE CLERK: United States versus Mark Thompson.  
2 Docket No. 10-CR-687.

3 Counsel, please state your appearances.

4 MR. TOOSSI: Amir Toossi, for the government. Good  
5 morning, Your Honor.

6 MR. CREIZMAN: Good morning, Your Honor.  
7 Eric Creizman, appointed counsel for Mr. Thompson, from  
8 Gibson, Dunn, and with me at counsel table is Kimberly Youhas  
9 who has passed the bar but not admitted.

10 THE COURT: Come on up and join us. Congratulations.  
11 All right.

12 MR. TOOSSI: Your Honor, this case is on for  
13 sentencing and so I know it's unusual for the case to appear  
14 for the first time before you for sentencing but I understand  
15 that you spoke with Judge Amon about bringing this case for  
16 sentencing here.

17 THE COURT: Yes, I agreed to sentence.

18 MR. TOOSSI: Right. So I could go through just  
19 procedural history for this case and if Your Honor would like  
20 --

21 THE COURT: That's fine. Why don't we do it.

22 MR. TOOSSI: Okay. Your Honor, this case is an  
23 escape case. This defendant appeared before you on a separate  
24 case and was sentenced in 2005 -- hold on one second. Let me  
25 make sure that is correct.

1 THE COURT: This is the case where I reduced the  
2 period of incarceration?

3 MR. TOOSSI: That's correct.

4 THE COURT: To 78 months.

5 MR. TOOSSI: From 97 months.

6 THE COURT: From 97 months.

7 MR. TOOSSI: That's correct.

8 In April of 2009 the defendant was transferred to  
9 the Brooklyn Residential Reentry Center, and was supposed to  
10 stay in the residential reentry sentence center until  
11 October 24, 2009. However, on June 7th, 2009 he signed out on  
12 a religious pass and did not return. The U.S. Attorney's  
13 Office sought and obtained a warrant for the defendant's  
14 arrest and he remained at large until November 18th when he  
15 was arrested by the NYPD for reckless endangerment in the  
16 first degree.

17 The facts of those cases are recounted in the PSR in  
18 paragraph 41 and I think it is worth noting that the defendant  
19 was not actually arrested on the day of his conduct, he was  
20 arrested some time thereafter -- about a month and a half  
21 later, but in short, he thought the police were going to  
22 arrest him so he stole somebody's car and led them on a high  
23 speed chase on the Staten Island Expressway, during which time  
24 he was travelling in the wrong direction.

25 Now, these are all state charges and when the

1 defendant was arrested by the State he was not immediately  
2 transferred to federal custody. Instead, he came to an  
3 agreement with the Staten Island District Attorney's Office  
4 and was not sentenced until August -- I'm sorry -- November of  
5 2010. Between November '09 and August -- and I know the  
6 timeline gets a little screwy --

7 THE COURT: That's all right. Go ahead.

8 MR. TOOSSI: But he, between November 2009 and  
9 August 2010, the defendant was incarcerated at Rikers Island  
10 in state custody. In August of 2010 he was writted over to  
11 federal custody but he was not sentenced on the state case  
12 until November, so about three months after he was writted  
13 over to federal custody.

14 Now, when he was sentenced in the state he was  
15 sentenced to 90 days, and obviously, that his time in state  
16 custody exceeded the sentence. So the issues before the Court  
17 are these, and defense counsel will clarify if I get them  
18 incorrect: From November of 2009 until February of 2010 the  
19 defendant is entitled to credit to time spent in the state and  
20 -- I'm sorry, let me back up. He would not be entitled to any  
21 credit towards his federal sentence, according to the B.O.P.,  
22 because he was in state custody serving a state sentence.  
23 However, after those 90 days ran, between what I calculate as  
24 February 16th of 2009 to --

25 THE COURT: No, no, 2010.

1 MR. TOOSSI: 2010. Thank you, Your Honor. 2010.  
2 February 16, 2010 until August 26th, 2010 he could receive  
3 credit for that time spent in custody towards --

4 THE COURT: That's about six months.

5 MR. TOOSSI: Six months.

6 THE COURT: So where was he during this period he was  
7 in state custody?

8 MR. TOOSSI: He was in city custody.

9 THE COURT: But he had already, in effect, fulfilled  
10 his obligation on a state sentence of 90 days; is that going  
11 to be your position?

12 MR. CREIZMAN: That -- yes, yes, Your Honor.

13 THE COURT: Okay.

14 MR. TOOSSI: So they're two different issues in  
15 terms of federal sentence now. There is the issue of the  
16 sentence that you gave the defendant in 2005, which would be  
17 the difference -- there's a lot of math here -- the difference  
18 between October 24, 2009 and June 7th, 2009. That being the  
19 time that he was supposed to --

20 THE COURT: I'm sorry. From October.

21 MR. TOOSSI: I'm sorry. I did the second date  
22 first. Between June 7, 2009 and October 24, 2009, which was  
23 the time that he was supposed to be in the Brooklyn  
24 Residential Re-Entry Center.

25 THE COURT: From June until?

1 MR. TOOSSI: October.

2 MR. CREIZMAN: He had served some time in the  
3 residential center, I believe, before his release -- his  
4 escape. Sorry.

5 THE COURT: What was the day he was supposed to get  
6 out of the residential center?

7 MR. TOOSSI: October 24th and he escaped on  
8 June 7th. So those are the two dates.

9 THE COURT: When did he arrive there?

10 MR. TOOSSI: April 28th.

11 Now, he also will lose good time credit. So that  
12 amount -- that four months is -- that's what the B.O.P. has  
13 informed me. The time remaining on his sentence has not yet  
14 been calculated by BOP. It will be, at least, four months and  
15 then there will be some good time credit lost. So their back  
16 of the envelope, and just for Your Honor's information in  
17 trying to devise a sentence on this case, their back of the  
18 envelope math indicates that he will probably serve seven more  
19 months on this sentence.

20 MR. CREIZMAN: Your Honor, just to interject, we  
21 have looked up the statutes, we have contacted the Bureau of  
22 Prisons General Counsel's Office. It seems to me, and based on  
23 what we've read, there's no guarantee that he will lose his  
24 good time credit. There's no -- you know, it has yet to be  
25 calculated, and I'm not sure what the source of Mr. Toossi's

1 calculations are.

2 MR. TOOSSI: Well, the fact --

3 THE COURT: Just hold on here. He's still serving a  
4 sentence, correct, on the 2005 conviction?

5 MR. TOOSSI: He owes time.

6 THE COURT: He owes time. Right. So how long has  
7 he been in federal custody since the escape?

8 MR. TOOSSI: August 26th until today. So a little  
9 under five months. A little under five months.

10 MR. CREIZMAN: Isn't it six months?

11 MR. TOOSSI: No. September, October, November,  
12 December.

13 THE COURT: Well, wouldn't it be useful for us to get  
14 this information from the Bureau of Prisons before I sentence  
15 him?

16 MR. TOOSSI: My understanding is that they will --  
17 my understanding from them is that they -- the Bureau of  
18 Prisons itself does not, like the Northeast Quadrant, does not  
19 make that determination. He has to go to Texas before --

20 THE COURT: You mean his papers?

21 MR. TOOSSI: His papers have to go to Texas before  
22 they'll make that calculation. Mr. Creizman is correct that it  
23 is not an absolute certainty that he would lose his good time  
24 credit but --

25 THE COURT: Well, I'd take it away from him in an

1 instant.

2 MR. TOOSSI: I think that is a safe assumption,  
3 Judge.

4 THE COURT: The problem is that, you know, here's  
5 someone who asked for and received a truncated sentence, he  
6 was put into a halfway house, and then he decided it wasn't  
7 good enough to get time off his sentence, it wasn't good  
8 enough to go to a halfway house, he had to escape. So, you  
9 know, there's just so much you can do to help people. So what  
10 do you propose? What is this all about?

11 MR. TOOSSI: Is that a --

12 THE COURT: That's to you.

13 MR. TOOSSI: That's to me.

14 THE COURT: I have to do a sentencing here but on an  
15 escape. Why don't I just sentence him on the escape and let  
16 the Bureau of Prisons work out the details.

17 MR. TOOSSI: That would be my position.

18 THE COURT: I'm not the Bureau of Prisons and they  
19 don't take away his good time, well, that's their decision.  
20 I'm not the Bureau of Prisons, I've got an opinion, as you  
21 just heard, but I'm not the Bureau of Prisons and I'm not  
22 going to tell them what to do. They wouldn't listen anyway.

23 MR. TOOSSI: The one thing -- the reason why  
24 Judge Amon wanted the case to be before Your Honor was only  
25 this, was that when it does go to Texas the Bureau of Prisons



1 will send Your Honor a letter, I believe, called a Barton  
2 letter where they will ask whether they can credit the time  
3 that he owes on your sentence from 2005 to the time that he  
4 spent in state custody.

5 THE COURT: So when they send me the letter I'll  
6 decide.

7 MR. TOOSI: But that was why Judge Amon --

8 THE COURT: I appreciate that. I spoke to her about  
9 it. I'm happy to sentence the defendant on the escape. I'm  
10 disappointed, obviously, with the defendant, that the  
11 defendant screwed it up -- to use the vernacular, yes.

12 MR. CREIZMAN: May I be heard?

13 THE COURT: Of course.

14 MR. CREIZMAN: Thank you.

15 When we -- before we had our hearing before  
16 Judge Amon, under the plea agreement the government and the  
17 defense both agreed that the appropriate guidelines range was  
18 eight to 14 months. The issue was going in whether both us, I  
19 think, were mistaken about whether the Bureau of Prisons would  
20 credit the state time towards his --

21 THE COURT: All the state time?

22 MR. CREIZMAN: Well, some of the state time, the  
23 state time over and above the 90 days towards his sentence.

24 THE COURT: The six months you mean?

25 MR. CREIZMAN: There was -- yes, the six months,

1 yes.

2 THE COURT: From 2/16/10 to 8/26.

3 MR. CREIZMAN: Correct. I moved for a below  
4 guideline sentence. Now, that it's been established that the  
5 six months can count towards his sentence in this case, and  
6 he's served almost another five months, we are within the  
7 guideline range, and the government under the plea agreement  
8 is not able to argue where in the guidelines range it would  
9 fall, and I want to also say what Mr. Thompson has done since  
10 that incredibly terrible misjudgment -- terrible judgment that  
11 he exercised in escaping, when he was arrested by this state  
12 -- by the New York City Police Department, he started to  
13 provide information to the Staten Island Direct Attorneys  
14 Office. Based on the information he provided they reduced his  
15 -- basically they gave him a deal which would allow him to  
16 serve a year in jail. He further, at great risk to himself,  
17 went into prison and wore a wire and tried to elicit  
18 incriminating information from a very --

19 THE COURT: Don't give me details in open court.

20 MR. CREIZMAN: Okay.

21 THE COURT: He cooperated.

22 MR. CREIZMAN: In addition to that, he has hope, and  
23 he has the will now. He spent most of his life in prison --  
24 most of his adult life in prison, and you know, we received a  
25 letter from the mother of his children who said -- who works

1 at a job placement facility, she's a supervisor, and she has  
2 promised to help him get appropriate employment, and  
3 Mr. Thompson's dedicated to that, and I think he's  
4 demonstrated over this past year that he is a changed person,  
5 that he's tried to make up for what he did. The state charge  
6 was not -- you know, what he did in escaping and also being  
7 arrested for the state crime, those were bad -- those were bad  
8 acts. There's no question about it, but the state interests  
9 -- the state believed that its interests were satisfied by the  
10 90 day sentence based on what Mr. Thompson did. So my point  
11 is that -- and in addition, there was a certificate of  
12 disposition that recommended that the state sentence be served  
13 concurrently with the federal sentence. That's not,  
14 obviously, binding on this Court, but if you were to add he's  
15 actually served eleven months, if you add three, we are at the  
16 top of the guidelines range. You know, we could add time for  
17 his previous sentence, but I'm not sure that a couple of  
18 months or maybe, you know, four months, whether it's six  
19 months is going -- is necessary at this point. I think  
20 Mr. Thompson based upon the 3553 (a) factor that I analyzed in  
21 my brief, I think he should be released and released today. I  
22 think he's ready to be released today, and with proper  
23 probation, and supervision, even electronic monitoring, I  
24 think he would do well.

25 His parents are ill. They are in this courtroom.

1 They are elderly. They need help getting to surgery and they  
2 both have surgeries coming up. He could be a great help to  
3 them, and I think, you know, he is inclined to do that. He  
4 wants to do that, and probation is not a light sentence at  
5 this point. Probation can be very difficult and he could have  
6 a difficult home detention sentence. So we are asking that  
7 Mr. Thompson be released today.

8 THE COURT: Looking back at 2005 -- he's on five year  
9 supervised release assuming, you know, he finishes his  
10 sentence on that crime, right?

11 MR. CREIZMAN: Yes.

12 THE COURT: So he's facing five years. If I release  
13 him today he's still facing five years of supervised release  
14 on the original charges of 2005, so he's not getting sprung to  
15 freedom without limitations no matter what I do; isn't that  
16 right?

17 MR. CREIZMAN: That is correct. That is correct.

18 THE COURT: I'm just pointing that out for everyone  
19 to hear. Whatever I do about his incarceration on the original  
20 indictment he still has five years of supervised release to go  
21 and you know, the tea leaves do not present a very favorable  
22 prognosis.

23 MR. CREIZMAN: All I can say, Your Honor --

24 THE COURT: Well, do you want me to sentence him  
25 today?

1 MR. TOOSSI: Yes.

2 MR. CREIZMAN: Yes.

3 THE COURT: Why don't we start the sentencing then  
4 because we haven't even gotten to that. Mr. Thompson, are you  
5 satisfied with the assistance that your attorney has given you  
6 thus far in this matter?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Okay. Do you understand that this is a  
9 sentencing proceeding in connection with your plea of guilty  
10 before Judge Ramon Reyes to superseding count indictment on  
11 November 4, 2010 charging you with escape from the custody of  
12 the Attorney General; do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Has the plea been accepted by Judge Amon  
15 or should I do that here?

16 MR. CREIZMAN: The plea was accepted by Judge Amon  
17 in the last hearing.

18 MR. TOOSSI: I don't have a specific recollection of  
19 that. My preference would be if Your Honor would.

20 THE COURT: I will accept it. Do you have any  
21 objection to my accepting the plea a second time?

22 MR. CREIZMAN: No objection.

23 THE COURT: And obviously, the government does not  
24 and I accept the defendant's plea of guilty before Judge Reyes  
25 on November 4, 2010, having previously read the transcript of

1 that proceeding. Okay.

2 MR. TOOSSI: Thank you.

3 THE COURT: Now, let's go over the guideline  
4 calculation. Let's go over what's in the file.

5 I've reviewed the presentence investigation report  
6 dated December 2nd, 2010.

7 Mr. Creizman, have you discussed that with your  
8 client?

9 MR. CREIZMAN: Yes, I have, Your Honor.

10 THE COURT: Has he reviewed it?

11 MR. CREIZMAN: Yes, he has, Your Honor.

12 THE COURT: Mr. Thompson, has your attorney answered  
13 any and all questions that you had about the presentence  
14 report?

15 MR. CREIZMAN: Yes.

16 THE COURT: I'm sorry?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Okay.

19 MR. TOOSSI: Your Honor, I notice that you are  
20 holding up the original presentence report. Do you have a  
21 copy of the revised presentence report? I am actually not --

22 MR. CREIZMAN: Your Honor, from my understanding,  
23 just to let you know, that the presentence report was revised  
24 for the purposes of taking off Judge Mauskopf and replacing  
25 the Judge with Judge Amon. I have an e-mail to that effect

1 from the probation officer.

2 THE COURT: That's it?

3 MR. CREIZMAN: I think that is completely it.

4 THE COURT: Did you share that information with your  
5 client?

6 MR. CREIZMAN: I have.

7 THE COURT: Do you have any belief there's anything  
8 else that has been changed?

9 MR. TOOSSI: No, Your Honor (perusing).

10 THE COURT: All right. There's a letter dated  
11 December 20th from defense counsel. Have you seen that,  
12 Mr. Toossi?

13 MR. TOOSSI: Yes.

14 THE COURT: There's a previous letter from the  
15 government -- previous letter -- December 14th to which the  
16 defense has replied -- replying to the defense; do you have  
17 that?

18 MR. TOOSSI: Yes.

19 THE COURT: There's a letter submitted under seal on  
20 December 10th by the defense, have you seen that?

21 MR. TOOSSI: Yes, Your Honor.

22 THE COURT: I also have a letter from Mrs. Ranice  
23 (ph) Rivera that I have read.

24 MR. CREIZMAN: Correct.

25 THE COURT: All right. Am I missing anything?

1 MR. CREIZMAN: No, no, Your Honor.

2 THE COURT: Under the computation of the guideline  
3 the total offense level is a seven, criminal history  
4 category is four, range of incarceration is eight to fourteen  
5 months in the custody of the Attorney General; does everyone  
6 agree with the guidelines calculation?

7 MR. TOOSI: Your Honor.

8 MR. CREIZMAN: Yes, Your Honor.

9 THE COURT: The Court agrees as well.

10 Is there anything else in the presentence report  
11 that is in error that you want to -- any issues you want to  
12 raise with the Court?

13 MR. CREIZMAN: No, Your Honor. As far as I know,  
14 there are no errors and to the extent there are, they wouldn't  
15 interfere with the guidelines. They wouldn't impact that.

16 THE COURT: All right. At this point I would like to  
17 hear from defense counsel as to where I should sentence the  
18 defendant, taking into account the factors under section  
19 3553(a) of Title 18 of the United States Code in order to  
20 impose a sentence that is sufficient but not greater than  
21 necessary to fulfill the purposes of sentencing.

22 MR. CREIZMAN: Thank you, Your Honor. I already,  
23 like, delivered some or probably most of my --

24 THE COURT: You don't have to repeat yourself.

25 MR. CREIZMAN: And I'm not going to but what I do



1 want to say is that, in fact, Mr. Thompson has served close to  
2 14 months in prison. Three of those months were for state  
3 offense, but the Court could consider it to run concurrently.  
4 I feel that that is the high end of the guideline.

5 Mr. Thompson might have extra time on his previous  
6 sentence, but I think that additional prison time is not going  
7 to help Mr. Thompson or society. I think that giving  
8 Mr. Thompson a chance, as he has promised to deliver, you  
9 know, to be a lawful member of society, to contribute to his  
10 parents' support and care, for those reasons I am -- we are  
11 asking for time served and a period of supervised release with  
12 conditions, and as strict conditions as the Court would deem  
13 proper, including home detention with electronic monitoring  
14 for a period of time, and Mr. Thompson could get -- will  
15 basically be able to acclimate to society while under  
16 supervised release and while under the supervision of  
17 probation and that's my argument, Your Honor.

18 MR. TOOSSE: Your Honor, I want to address the  
19 cooperation issue first, and I've indicated this in the  
20 letter, but I'm not sure it really comes across. What the  
21 defendant is asking the Court to do is to downwardly departure  
22 or to vary the sentence below the guidelines in part because  
23 of his cooperation on two grounds. One that he cooperated at  
24 all and then, two, that it indicates something about his  
25 dedication to being a lawful member of society. The thing that

1 needs to be considered is that when the defendant was arrested  
2 for the charges in the state he was looking at a mandatory  
3 minimum of four years if he was convicted -- excuse me -- if  
4 he was convicted to the D felony. Convicted to the E felony  
5 he would be looking at a mandatory minimum of three years. He  
6 did wear a wire. I won't get into the details of the  
7 cooperation, but he did cooperate in the Staten Island D.A.'s  
8 Office and did decide that that was worth a 90 day sentence.  
9 Had he been convicted of a felony he would be looking at an  
10 enhancement in this case of four points. That would be under  
11 2P1.1B3, and his guidelines range would go to 18 to 24 months.  
12 So I'm not suggesting that that should be the guideline range,  
13 but the point being that he has already -- not only did he  
14 receive a sentence that was well below the mandatory minimum  
15 that he was facing in the state, but he also has gained a  
16 benefit in this case because he didn't receive a felony  
17 conviction, and that reduced his guideline range by almost a  
18 year already. And then the second point is that I think that  
19 the circumstances of his cooperation indicate that this isn't  
20 a desire to turn over a new leaf, this was in reaction to a  
21 lengthy prison term and knowing that he was already on an  
22 escape status on another case, and that he already had time  
23 owed on another case. He spent the greater portion of his 20s  
24 incarcerated and there hasn't been much of an impact to show  
25 that his behavior is going to conform, unless he's put under

1 pressure by law enforcement.

2 So this is -- obviously, under the plea agreement I  
3 can't argue where it should fall in the guidelines and I am  
4 not making an argument about where it should fall in the  
5 guidelines.

6 THE COURT: Well, the six months from 2/16/10 to  
7 8/26/10, that would be a deduction on any federal sentence?

8 MR. TOOSSI: He would -- based on 3585 he would get  
9 credit for that time.

10 THE COURT: So I don't have to do that. That can be  
11 done by the Bureau of Prisons.

12 MR. TOOSSI: Actually, Your Honor can't do that.  
13 That would be done by the Bureau of Prisons.

14 THE COURT: All right.

15 MR. TOOSSI: That calculation is done by them.  
16 Obviously, Your Honor is the second sentencing judge and  
17 there's nothing in the plea agreement that states that the  
18 defendant would get a concurrent sentence and any  
19 recommendation from the state as to a concurrent sense is not  
20 binding on this Court in terms of his family.

21 THE COURT: Concurrent as to the first three months?

22 MR. TOOSSI: The first three months, correct.

23 THE COURT: How long has he been in federal custody?

24 MR. TOOSSI: Since August. So a little under five  
25 months.

1 THE COURT: Five and six is eleven. So even if I  
2 give him the maximum he would only serve another three months.

3 MR. TOOSSI: In addition to -- well, that also  
4 brings up the second -- another issue which is whether this  
5 term of incarceration will be concurrent or consecutive to the  
6 original sentence and I would argue, Your Honor, that actually  
7 you have to -- under the statute you'd have to sentence him to  
8 a period of incarceration consecutive to the original  
9 sentence, so it really -- I mean --

10 THE COURT: What about the supervised release?

11 MR. TOOSSI: The supervised release could be run  
12 consecutive or concurrent.

13 So in my view, Your Honor, what we are really  
14 looking at is a period of time in state custody of about six  
15 months which looks like it's going to be the amount of time  
16 that he owes left on his 2005 sentence, and then my argument  
17 would be that he is supposed to serve whatever sentence he  
18 gets on that after August.

19 MR. CREIZMAN: Your Honor, as an initial matter, it  
20 seems to me that six months in Rikers Island would be credited  
21 towards a sentence here and the five months that he spent in  
22 the MDC would be credited towards the sentence here. That's  
23 eleven months. That's within the guidelines range. I am not  
24 asking for a downward departure. What I am saying about his  
25 cooperation is that I think his cooperation suggests that

1 Mr. Thompson -- that the 14 months that Mr. Thompson has spent  
2 in Rikers Island and in the MDC, both places considerably  
3 harsher than a prison where he would actually spend; you know,  
4 not a holding facility.

5 THE COURT: You know, I wasn't obligated to lower  
6 his sentence. There's nothing that said I had to give him a  
7 lower sentence when he came back for resentencing. I could  
8 have just left it the same. It was a gift.

9 MR. CREIZMAN: I understand, Your Honor.

10 THE COURT: I'm not at all convinced that, you know,  
11 he cooperated with the state because he had turned over a new  
12 leaf. He cooperated in the state because he is facing four  
13 years mandatory minimum in jail. That's why he cooperated.

14 MR. CREIZMAN: Well --

15 THE COURT: That was a smart thing to do, but don't  
16 say somehow I should take that into account when he basically  
17 just gave the back of his hand to the federal court. What do  
18 you expect out of the Court? To say thank you, you may go on  
19 your way?

20 MR. CREIZMAN: Your Honor, I don't -- I am not  
21 trying to minimize.

22 THE COURT: Well, don't because it's pretty darned  
23 unacceptable. You can finish your statement. I'll listen.

24 MR. CREIZMAN: Thank you, Your Honor.

25 I don't believe he was facing a mandatory minimum in

1 state court of four years. I just wanted to point that out.  
2 I think that is incorrect.

3 THE COURT: All right.

4 MR. CREIZMAN: In addition, I also don't believe  
5 that any statute requires you, Your Honor, to sentence the  
6 undischarged portion of his sentence and this sentence  
7 consecutively. I don't think there's any requirement. It is  
8 not mandatory, you know. So in this case, I believe,  
9 Mr. Thompson, that 3553 (a) factors can be satisfied. Given  
10 where he's spent in Rikers and MDC for 14 months, I think that  
11 supervised release will give him a chance to change, to turn  
12 his life around. I don't believe that six extra months in  
13 jail or four extra months in jail or three extra months in  
14 jail will do anything for Mr. Thompson; whereas, if  
15 Mr. Thompson is released he would be of assistance to his  
16 family and he might get -- he's going to try to get a job, and  
17 that could be a requirement of supervised release.

18 THE COURT: Well, you're right. An extra three  
19 months or four months or six months isn't going to do anything  
20 to improve Mr. Thompson. It's called punishment. That's what  
21 it is. I'm under no illusion that if I give the defendant more  
22 time in jail that it is going to have some salutary affect on  
23 him. After all this, he is in criminal history category four.  
24 He escaped after getting a reduced sentence from this Court,  
25 he then had a state proceeding. What else?

1 MR. TOOSSI: Your Honor, I just want to direct your  
2 attention to paragraph 90 of the PSR. The last sentence. Per  
3 guideline 5G, as in George, 1.3 C, as in Charlie, the sentence  
4 for the instant offense shall be imposed to run consecutively  
5 to the prior undischarged term of imprisonment for the 2005  
6 sentence.

7 MR. CREIZMAN: My understanding is that the  
8 guidelines are not mandatory.

9 THE COURT: You're correct.

10 All right. Let me hear from you, sir. You've been  
11 standing there quietly listening to all of us. What would you  
12 like to say before I sentence you, Mr. Thompson?

13 THE DEFENDANT: I know for one what I did was wrong.

14 THE COURT: What did you do that was wrong?

15 THE DEFENDANT: Leaving the halfway house. That was  
16 wrong for me to do, that I apologize to the courts, to the  
17 Marshal Service, most of all my family for putting them  
18 through all of this.

19 THE COURT: Yes.

20 THE DEFENDANT: I have been locked up my whole damn  
21 life. I keep doing time. It's not helping me. Starting to  
22 bother me mentally, every other way that is possible, you  
23 know. I just like a chance to be able to take care of my mom  
24 and my dad and my children, and I can get employment as soon  
25 as I'm released from here.

1 THE COURT: You can?

2 THE DEFENDANT: I know that for a fact.

3 THE COURT: What kind of employment?

4 THE DEFENDANT: Well, working construction or maybe  
5 sanitation. I have a guarantee.

6 THE COURT: Private sanitation?

7 THE DEFENDANT: Yes, Your Honor. I just, you know,  
8 I have been -- feel like I've been locked up forever and just  
9 --

10 THE COURT: Well, I understand that, but a lot of  
11 this is your responsibility. You did these things. You admit  
12 you did them. Frankly, I don't want to see you again. I want  
13 you to go out and have a constructive worthwhile life. There's  
14 nothing about you that makes it impossible for you to have a  
15 good life. The only thing standing in the way is you. That's  
16 what stands in the way. I don't understand why you did the  
17 things you did, but whatever you do you are going to be under  
18 the Court's supervision for the next five years. So if you  
19 mess up you are coming back and you go back to jail possibly.  
20 I don't want to see that. That's not in your interest, that's  
21 not in the Court's interest, that's not in your family's  
22 interest, but I am skeptical. That is why I agreed to conduct  
23 the sentencing. Judge Amon indicated that she would be willing  
24 to have me conduct it because I wanted to tell you that you  
25 don't get it. I'd like you to get it, take care of your



1 parents, take care of your family, your own children.

2 THE DEFENDANT: Yes.

3 THE COURT: No one wants to see you spend more time  
4 in jail but it's up to you. I assure you, you come back here  
5 I'll put you in jail if it's appropriate to do so. Okay.

6 Are you ready to be sentenced?

7 THE DEFENDANT: Yes.

8 THE COURT: All right. I sentence you to 11 months  
9 in the custody of the Attorney General to run consecutive to  
10 any undischarged term of imprisonment, three years of  
11 supervised release, to run consecutive to any other period of  
12 supervised release that has been imposed in the prior case.  
13 You shall participate in outpatient and/or inpatient treatment  
14 or detoxification program approved by the probation  
15 department. You are to contribute to the costs of such  
16 treatment/detoxification, not to exceed an amount determined  
17 reasonable by the Probation Department's Sliding Scale for  
18 Substance Abuse Treatment Services, and you shall cooperate in  
19 securing any applicable third party payment, such as insurance  
20 of Medicaid. You are to disclose all financial information and  
21 documents to the Probation Department to assess your ability  
22 to pay. You shall not consume any alcohol or other  
23 intoxicants during and after treatment unless granted a  
24 prescription by a licensed physician, and proof of same is  
25 provided to the probation department. You shall submit to

1 testing during and after treatment to ensure abstinence from  
2 drugs and alcohol.

3 You are to maintain full-time verifiable employment,  
4 and/or participate in an educational vocational training  
5 program as directed by the Probation Department.

6 You shall not possess a firearm, ammunition or  
7 destructive device.

8 There's a \$100 special assessment, which is  
9 mandatory.

10 You have the right appeal your sentence if you think  
11 the Court has not properly followed the law in sentencing you.  
12 Your time to appeal is extremely limited and you should  
13 discuss with your attorney at once whether an appeal would be  
14 worthwhile. I note that you agree not to appeal or otherwise  
15 challenged the sentence if this Court's sentence is 14 months  
16 or below. That's set forth in your plea agreement.

17 Now, let me just say this. Is there anything else?  
18 There's no open count?

19 MR. TOSSI: No. It is a one count indictment.

20 THE COURT: Let me just say this on the supervised  
21 release. If you turn your life around and probation comes in  
22 here in three years and says to me that Mr. Thompson, he has  
23 made tremendous progress, I'll consider reducing your period  
24 of supervised release. I have no desire to have you continue  
25 that for forever. So that is up to you.

1           In addition, I want to see Mr. Thompson one year  
2 from the beginning of supervised release. I want a report  
3 from the Probation Department after one year, so that I know  
4 that Mr. Thompson has fulfilled his commitments to his family  
5 and to himself and I'm going to leave it to the Bureau of  
6 Prisons to figure out the rest.

7           Anything else?

8           MR. TOOSSI: No, Your Honor.

9           MR. CREIZMAN: One moment, Your Honor.

10          (Defendant and counsel conferred)

11          Your Honor, my client wishes to serve the rest of  
12 whatever sentence is determined at the MDC and I would think  
13 that he would but he's worried about his safety.

14          THE COURT: I recommend that whatever is left on the  
15 defendant's prison sentence be served in the MDC. I don't  
16 think there's that much left.

17          MR. TOOSSI: I anticipate he will probably be  
18 released in July.

19          THE COURT: In July?

20          MR. TOOSSI: That's my calculation.

21          THE COURT: All right. I don't want him released in  
22 July. I thought it was another couple of months. He should  
23 get credit. He needs to get credit. He should get credit for  
24 the six months past the 90 days, right, and then for the five  
25 months --

1 MR. TOOSSI: Right. What I have --

2 THE COURT: Five and six is eleven. I thought that  
3 would basically do it. Oh, you're saying he might end up  
4 being charged for good time that he was given previously?

5 MR. TOOSSI: Yes, I'm anticipating an extra two  
6 months, but I mean I could be wrong about that, but just to  
7 let Your Honor know this is my back of the envelope  
8 calculation. My calculation is that he'll not get credit for  
9 his state time up until February, which is the 90 day  
10 sentence. Then he'll get -- if you figure that he'll get six  
11 months plus the eleven months that --

12 THE COURT: Plus the five months -- plus the  
13 eleven months.

14 MR. TOOSSI: The eleven months that you just  
15 sentenced him to, plus the undischarged time on his 2005  
16 sentence. So I'm saying six months. It is four plus the two.  
17 I am anticipating two months of loss of good time. So it will  
18 come out to seventeen months, and actually will be in June of  
19 this year that he would be released. That's what I am  
20 anticipating the BOP is going to do.

21 THE COURT: It is too complicated. I'm going to  
22 change. I'm going to sentence him concurrently and not  
23 consecutively to the eleven months, all right, then you  
24 figure it out.

25 MR. TOOSSI: All right.

1 THE COURT: I stopped figuring out good time and  
2 other issues when I left the State Attorney General's Office.  
3 I didn't understand it then, I don't understand it now. That's  
4 for someone else to figure out, but here's the point. I'm  
5 going to do this because I want you to have a chance, but I  
6 want you to take advantage of it and not blow it the way you  
7 did the last time I gave you a chance. Understand?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: The sentence that I have imposed is  
10 sufficient but not greater than necessary to fulfill the  
11 purposes of sentencing as I am required under 18 United States  
12 Code section 3553 (a). Have I missed anything?

13 MR. TOOSSI: No, Your Honor.

14 MR. CREIZMAN: I have to admit that I'm just  
15 somewhat confused.

16 THE COURT: Oh, yes?

17 MR. CREIZMAN: After the calculation --

18 THE COURT: The calculation is that the sentence that  
19 I impose is to run concurrently with any other federal  
20 sentence. The undischarged part of the original seventy-eight  
21 months will be calculated along with this. So the time that  
22 the defendant has spent in federal prison beginning on 2/16/10  
23 will be taken into account; isn't that right? That's my  
24 understanding, but the rules of the Bureau of Prisons as to  
25 how they do the computation, you will discuss with them.

1 MR. CREIZMAN: Okay. Understood.

2 THE COURT: Anything more?

3 MR. CREIZMAN: No.

4 THE COURT: Should I order lunch?

5 MR. CREIZMAN: No, Your Honor.

6 THE COURT: I'm serious.

7 MR. TOOSI: I don't think there's another issue.

8 MR. CREIZMAN: No.

9 THE COURT: Let's hope that it all works out.

10 MR. CREIZMAN: Thank you.

11 THE COURT: Have a nice day.

12 Thank you, deputies.

13 (Proceedings adjourned as above set forth)

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